No. 17-1307

In the Supreme Court of the United States

DENNIS OBDUSKEY, PETITIONER

v.

MCCARTHY & HOLTHUS LLP, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE SUPPORTING RESPONDENT

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QUESTION PRESENTED

The Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. 1692 *et seq.*, imposes various requirements on "a debt collector * * * in connection with the collection of any debt." 15 U.S.C. 1692c(a); see 15 U.S.C. 1692c-1692g. The FDCPA generally defines "debt collector" (with various exceptions) as "any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another." 15 U.S.C. 1692a(6). Debt collectors who fall within that general definition are subject to all of the FDCPA's requirements for debt collectors. The Act also contains a limited-purpose definition of "debt collector," which provides that, "[f]or the purpose of section 1692f(6) of this title, [the] term also includes any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the enforcement of security interests." *Ibid.* The question presented is as follows:

Whether enforcement of a security interest in property through a state-law nonjudicial-foreclosure process constitutes debt collection for all purposes under the FDCPA.

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INTEREST OF THE UNITED STATES

The Fair Debt Collection Practices Act (FDCPA or Act), 15 U.S.C. 1692 *et seq.*, authorizes the Bureau of Consumer Financial Protection (Bureau) to "prescribe rules with respect to the collection of debts by debt collectors, as defined in [the FDCPA]." 15 U.S.C. 1692*l*(d). The Bureau, the Federal Trade Commission (FTC), and other federal agencies are responsible for enforcing the Act through administrative proceedings and civil litigation. 15 U.S.C. 1692*l*(a)-(c). The United States therefore has a substantial interest in the Court's resolution of the question presented.

STATUTORY PROVISIONS INVOLVED

Pertinent statutory provisions are reprinted in the appendix to this brief. App., *infra*, 1a-28a.

STATEMENT

1. a. Congress enacted the FDCPA to address "the use of abusive, deceptive, and unfair debt collection practices by many debt collectors." Pub. L. No. 95-109, § 802(a), 91 Stat. 874 (15 U.S.C. 1692(a)). Congress concluded that "[m]eans other than misrepresentation or other abusive debt collection practices [we]re available for the effective collection of debts," and "[e]xisting laws and procedures * * * [we]re inadequate to protect consumers." 15 U.S.C. 1692(b) and (c). The Act's "purpose[s]" include "eliminat[ing] abusive debt collection practices by debt collectors" and "insur[ing] that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged." 15 U.S.C. 1692(e).

The FDCPA pursues those purposes primarily by imposing various requirements on the activities of "debt collector[s]" "in connection with the collection of [a] debt." 15 U.S.C. 1692c(a); see 15 U.S.C. 1692c-1692h. Among other things, the Act restricts debt collectors' communications with consumers and third parties "in connection with the collection of any debt," 15 U.S.C. 1692c(a) and (b); prohibits them from "harass[ing], oppress[ing], or abus[ing] any person," or from making "false, deceptive, or misleading representation[s]," "in connection with the collection of any debt," 15 U.S.C. 1692d, 1692e; and bans their use of "unfair or unconscionable means to collect or attempt to collect any debt," 15 U.S.C. 1692f. It also requires a debt collector seeking to collect a debt promptly to provide the consumer certain information about the debt, 15 U.S.C. 1692g(a), and to "cease collection of the debt" if the consumer "dispute[s]" the debt, until the debt collector provides verification of the debt. 15 U.S.C. 1692g(b).

b. Consistent with its focus on protecting "consumer[s]" from certain abuses, 15 U.S.C. 1692(b), the FDCPA does not apply to all "debts" or "debt collectors" in a colloquial sense. It defines "debt" to include only "an[] obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes." 15 U.S.C. 1692a(5). Commercial debts thus are not covered.

Similarly, the FDCPA's provisions do not apply to every person who might colloquially be described as collecting a debt. The Act does not define "collection," but it contains two definitions of "debt collector," 15 U.S.C. 1692a(6), both subject to an array of exclusions, see 15 U.S.C. 1692a(6)(A)-(F). First, Section 1692a(6) states that "'debt collector' means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another." 15 U.S.C. 1692a(6). Second, Section 1692a(6) further states that, "[f]or the purpose of section 1692f(6) of this title, [the] term also includes any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the enforcement of security interests." *Ibid.* Section 1692f(6) prohibits debt collectors from "[t]aking or threatening to take any nonjudicial action to effect dispossession or disablement of property" if the debt collector lacks a "present right to possession * * * through an enforceable security interest," if it does not actually "inten[d]" to take possession, or if the property is "exempt." 15 U.S.C. 1692f(6)(A).

Taken together, these two definitions establish that a person engaged in a business whose principal purpose is enforcing security interests generally falls outside the Act, except that the person is deemed to be a debt collector for purposes of Section 1692f(6). The FDCPA permits such a person to take collateral pursuant to a security interest, so long as applicable law permits doing so and the person does not make false threats.

c. The FDCPA does not define "security interest[]." In ordinary usage, the term refers to a property interest given to a creditor to secure a debt—typically a right to take or compel the sale of property that the consumer has pledged as collateral if the consumer does not pay the debt. See, *e.g.*, *Black's Law Dictionary* 1217 (5th ed. 1979) (*Black's Fifth*) ("A form of interest in property which provides that the property may be sold on default in order to satisfy the obligation for which the security interest is given."); *Black's Law Dictionary* 1562 (10th ed. 2014) (*Black's Tenth*) (similar).

Security interests are generally governed by state law. See, *e.g.*, *Butner* v. *United States*, 440 U.S. 48, 55-57 (1979). Security interests in personal property are addressed by Article 9 of the Uniform Commercial Code (U.C.C.), which every State has adopted in some form. See William H. Henning & Fred H. Miller, 66 No. 4 U.C.C. Bulletin 1, *Report on the UCC: 2008—Part 1* (Jan. 2009). Security interests in real property are known as mortgages. See *Black's Fifth* 1217; 2 Baxter Dunaway, *Law of Distressed Real Estate* § 15:1 (May 2018 update) (Dunaway).

If a debtor defaults on a mortgage debt, the ordinary method of enforcing the security interest is "[f]oreclosure," *i.e.*, "the process in which property securing a mortgage is sold to pay off the loan balance due." 2 Dunaway § 15:1; see Restatement (Third) of Property

(Mortgages) § 8.2 (1997) (Restatement). State foreclosure laws vary, but two general types exist. 2 Dunaway § 16:1; see *BFP* v. *Resolution Trust Corp.*, 511 U.S. 531, 541-542 (1994). First, every State permits "judicial" foreclosure, which requires a creditor to initiate a court action and obtain a court order to foreclose on the secured property. See 2 Dunaway § 16:1. The debtor and other interested parties are typically named as defendants. *Id.* § 16:3. Following a sale, most States permit the creditor to obtain a deficiency judgment against the debtor for any remaining balance. See National Consumer Law Center, *Foreclosures and Mortgage Servicing* § 12.3.2 (5th ed. 2014) (NCLC).

Second, most States additionally permit "nonjudicial foreclosure," also called "power of sale foreclosure," "foreclosure by advertisement," or a "trustee's sale." 2 Dunaway § 17:1; see *id.* App. 17A (listing States). Nonjudicial foreclosures typically enable a creditor to initiate "a public sale of the property" without "utiliz[ing] court proceedings to conduct the foreclosure sale unless the lender wants to obtain a deficiency judgment" for any shortfall that remains after the property has been sold. *Id.* §§ 16:1, 17:1. Where nonjudicial foreclosure is available, "it is normally the preferred method of foreclosure because, in most instances, the process is less costly and time-consuming than judicial foreclosure." *Id.* § 16:1. In many States, however, creditors who elect nonjudicial foreclosure waive or limit their ability to obtain a deficiency judgment against the debtor for any shortfall. See *ibid.*; see also NCLC § 12.3.2.

"State non-judicial foreclosure statutes typically set out both substantive and procedural requirements for conduct of a foreclosure sale," and "[c]ompliance with these requirements is necessary to complete a valid sale"

and "to extinguish the borrower's interest in the property." NCLC § 7.5.1; see 2 Dunaway § 17:2. These requirements limit who may initiate nonjudicial foreclosure and typically include procedural protections that govern "serving and recording pre-sale notices, placing advertisements, serving and recording notices of sale, and conducting the sale." NCLC § 7.5.1; see 2 Dunaway § 17:1. A creditor ordinarily may pursue nonjudicial foreclosure only if the mortgage instrument contains a "power of sale clause" granting it the authority to initiate such a sale. 2 Dunaway § 17:2. A common practice is to vest the security interest in a third-party trustee; when trustees are used, the instrument granting the power of sale is called a "deed of trust." Restatement § 8.2 cmt. a.

2. This case involves a real-property security interest under Colorado law, which generally permits a creditor who holds a deed of trust to "foreclose on [a] lien either through a judicial or a non-judicial foreclosure." 13 Debra Knapp, *Colorado Practice Series, Civil Procedure Forms and Commentary* § 120.1 (2d ed. 2005). In a judicial foreclosure, such a creditor may "obtain[] a complete adjudication of the rights of all parties thereto, with respect to any real property and for damages, if any, for the withholding of possession," and "[t]he court in its decree shall grant full and adequate relief so as to completely determine the controversy and enforce the rights of the parties." Colo. R. Civ. P. 105(a).

Colorado's "nonjudicial" foreclosure process is a misnomer because a court order is required to conduct the foreclosure sale. But it does not entail a full-blown, trial-type proceeding that adjudicates all of the parties' claims (as in judicial foreclosures). And the creditor cannot obtain a deficiency judgment in the foreclosure proceeding for any debt remaining after the sale. Pet. App. 8a-9a.

For residential mortgages, Colorado's nonjudicial-foreclosure process typically begins when the creditor or its agent sends the debtor certain statutorily required contact information for Colorado's foreclosure hotline and the creditor's loss-mitigation department. Colo. Rev. Stat. § 38-38-102.5 (2017). Thirty days thereafter, the creditor may initiate foreclosure proceedings by filing a "notice of election and demand" with the public trustee for the county where the property is located. *Id.* § 38-38-101. The public trustee is a state official appointed by the governor. *Id.* §§ 38-37-101, 38-37-102. The public trustee is responsible for recording the notice of election and demand and mailing notices to the debtor providing information about the debtor's rights to cure the default and the foreclosure sale's date and location. *Id.* §§ 38-38-101(14), 38-38-102, 38-38-103. Notices are also mailed to interested parties and must be published in a local newspaper. *Id.* §§ 38-38-100.3(19), 38-38-103(5).

If the debtor does not cure the default or declare bankruptcy, a creditor holding a deed of trust may file a verified motion in court for an order authorizing sale of the property. Colo. Rev. Stat. §§ 38-38-104, 38-38-105(b), 38-38-109(s) (2017); Colo. R. Civ. P. 120(a). The creditor must serve the debtor and other interested parties with notice of the motion and the hearing date, and any interested person who disputes the grounds for the motion may file a response. Colo. R. Civ. P. 120(b) and (c). The court will then hold a hearing to determine whether to order the sale. Colo. R. Civ. P. 120(d).

If the court authorizes the sale, the public trustee or sheriff may sell the property at a public auction. Colo. Rev. Stat. § 38-38-110 (2017). The court "shall require a return of sale" to be filed and "shall enter an order approving the sale" if it was "conducted in conformity with

the [court's] order." Colo. R. Civ. P. 120(g). Once the proceeds are distributed to lienholders, "any remaining overbid" is "paid to the owner." Colo. Rev. Stat. § 38-38-111 (2017). If the sale proceeds are insufficient to pay off the debt, the creditor cannot recover the balance due in the same proceeding, but must file a separate suit against the debtor. See *id.* § 38-38-106(6); *Bank of Am.* v. *Kosovich*, 878 P.2d 65, 66 (Colo. App. 1994).

3. In 2007, petitioner borrowed $329,940 to buy a home in Colorado, which served as security for the loan. Pet. App. 2a; see J.A. 37. Wells Fargo Bank, N.A., serviced the loan. Pet. App. 2a. In 2009, petitioner defaulted. *Ibid.*

In 2014, Wells Fargo hired respondent McCarthy & Holthus LLP (McCarthy), a law firm, to foreclose on the property. Pet. App. 2a. McCarthy sent petitioner an undated letter stating that it had been "instructed to commence foreclosure." J.A. 37. The letter further stated that McCarthy "may be considered a debt collector attempting to collect a debt" and would "assume this debt to be valid unless [petitioner] dispute[d]" it within 30 days, in which case McCarthy would send verification of the debt to petitioner. J.A. 37-38 (capitalization omitted). In a separate undated letter, McCarthy provided petitioner the required contact information for Colorado's foreclosure hotline and McCarthy's loss-mitigation representatives. See J.A. 42-43. In August 2014, petitioner wrote to McCarthy disputing the debt and requesting verification, directing McCarthy to "cease all unauthorized contact" about the debt pursuant to 15 U.S.C. 1692c(c), and stating that he was represented by counsel. C.A. Supp. App. 124-125.

McCarthy did not provide petitioner verification of the debt. See Pet. App. 2a. Instead, in May 2015, it commenced a nonjudicial-foreclosure proceeding under Colorado law by filing with the public trustee a "notice of election and demand for sale." J.A. 39 (capitalization and emphasis omitted). The notice stated that Wells Fargo had "elected to accelerate the entire indebtedness" secured by the deed of trust and directed the trustee to "sell [the] property for the purpose of paying the indebtedness thereby secured." J.A. 39-40. It also stated that McCarthy "may be considered a debt collector attempting to collect a debt." J.A. 40 (capitalization omitted).

4. a. Petitioner filed this action against McCarthy and Wells Fargo, asserting claims in part under the FDCPA. Pet. App. 2a-3a, 16a. The district court dismissed the suit, concluding that "the FDCPA does not apply to non-judicial foreclosures" because "foreclosure proceedings are not a collection of a debt" within the meaning of the FDCPA. *Id.* at 20a-21a.

b. The court of appeals affirmed. Pet. App. 1a-13a. As relevant here, the court concluded that, although petitioner had "sufficiently pled that McCarthy failed to verify [petitioner's] debt after it was disputed, in violation of [15 U.S.C.] 1692g," McCarthy "[wa]s not a debt collector for purposes of the FDCPA" when it initiated the nonjudicial-foreclosure proceeding because "McCarthy's mere act of enforcing a security interest through a non-judicial foreclosure proceeding does not fall under the FDCPA." *Id.* at 5a, 12a. The court reasoned that "enforcing a security interest is not an attempt to collect money from the debtor, and the consumer has no obligation . . . to pay money." *Id.* at 7a (citation and internal quotation marks omitted). It observed that

nonjudicial foreclosures differ in an "obvious and critical" respect from judicial foreclosures: they "do[] not preserve to the trustee the right to collect any deficiency in the loan amount personally against the mortgagor." *Id.* at 8a (citations omitted). The court also expressed concern that, "[i]f the FDCPA applied to non-judicial foreclosure proceedings in Colorado, it would conflict with Colorado mortgage foreclosure law." *Id.* at 10a. It rejected the argument that a contrary reading is compelled by 15 U.S.C. 1692i, "a venue provision" for "'any legal action on a debt'" by a debt collector "'against any consumer.'" Pet. App. 9a (citation omitted). The court reserved judgment on whether "more aggressive collection efforts leveraging the threat of foreclosure into the payment of money" would "constitute 'debt collection'" under the Act. *Id.* at 11a.

SUMMARY OF ARGUMENT

Initiating a nonjudicial-foreclosure proceeding generally does not constitute debt collection under the FDCPA.

A. The FDCPA's text and structure make clear that enforcement of a security interest, without more, is not debt collection except for purposes of one of the Act's provisions. The Act creates a two-tiered framework that defines two types of "debt collector" and imposes different obligations on each type. 15 U.S.C. 1692a(6). The Act's general definition of "debt collector" includes businesses whose "principal purpose" is the "collection of any debts." *Ibid.* Persons who meet the general definition (and are not otherwise excluded) are subject to all of the Act's requirements. A separate definition covers businesses whose principal purpose is the "enforcement of security interests," but only "[f]or the purpose of" Section 1692f(6). *Ibid.* It follows that enforcing a security interest, by itself, is not debt collection, except for purposes of

Section 1692f(6). Otherwise, the additional, limited-purpose definition of debt collector would be superfluous.

That reading comports with the FDCPA's purposes. The Act's express objective is to protect consumers from certain types of abusive practices. Congress reasonably determined that enforcing security interests in accordance with applicable law does not present the same risks as demanding payment from debtors directly. The enforcement of security interests has long been subject to an extensive body of state law that provides substantial safeguards. Section 1692f(6) itself reflects that Congress did not view enforcing security interests in general as posing a concern. Respecting the distinction Congress drew between collecting debts and enforcing security interests is also consistent with *Heintz* v. *Jenkins*, 514 U.S. 291 (1995). *Heintz* did not address whether enforcing a security interest is debt collection. It held only that the Act does not exempt lawyers engaged in litigation if their acts otherwise constitute debt collection.

B. McCarthy did not engage in debt collection by initiating a nonjudicial-foreclosure proceeding under Colorado law. Actions that are legally required to enforce a security interest are not debt collection under the FDCPA—except for purposes of 15 U.S.C. 1692f(6), which is not at issue here. Nonjudicial foreclosure is "the enforcement of [a] security interest[ ]," 15 U.S.C. 1692a(6), and filing a notice with a public trustee is undisputedly a necessary step in that process in Colorado. Deeming such activities debt collection could bring the FDCPA into conflict with state law and effectively preclude compliance with state foreclosure procedures. No sound basis exists to assume Congress intended that result.

C. Petitioner's contrary arguments lack merit. His principal contention that foreclosure *also* constitutes a

direct and indirect attempt to collect a debt proves far too much. On that view, all security-interest enforcement would likewise appear to be debt collection, rendering the additional definition of "debt collector" superfluous. Petitioner errs in contending (Br. 25) that the additional definition can be saved from superfluity by reading it to reach only "classic 'repo' activity." That ad hoc interpretation has no grounding in the statute and does not avoid surplusage in any event. Nor does the FDCPA's venue provision, 15 U.S.C. 1692i, classify all foreclosure as debt collection. And the fact that the FDCPA does not categorically exclude foreclosure reflects that persons who undertake nonjudicial foreclosure or other methods of security-interest enforcement are debt collectors for purposes of Section 1692f(6).

ARGUMENT

ENFORCEMENT OF A SECURITY INTEREST THROUGH A NONJUDICIAL FORECLOSURE GENERALLY IS NOT DEBT COLLECTION UNDER THE FDCPA

The FDCPA's requirements generally apply only to a "debt collector" engaged in activities "in connection with the collection of any debt." 15 U.S.C. 1692c(a); see 15 U.S.C. 1692c-1692g. The question here is whether McCarthy engaged in debt collection triggering the FDCPA provisions at issue when it initiated a nonjudicial foreclosure against petitioner's property. It did not. The FDCPA draws a critical distinction between collecting debts and enforcing security interests. The statute's text and structure make clear that enforcement of a security interest, without more, is not debt collection except for purposes of 15 U.S.C. 1692f(6), which is not at issue in this case. Initiating a nonjudicial-foreclosure proceeding in accordance with state law undisputedly constitutes enforcement of a security interest. The

court of appeals therefore correctly concluded that initiating nonjudicial foreclosure is not debt collection for purposes of the FDCPA provisions at issue.

A. Enforcement Of A Security Interest, Without More, Generally Is Not Debt Collection Under The FDCPA

The FDCPA does not define the "collection" of a debt. Its text and structure make clear, however, that enforcement of a security interest by itself generally is not debt collection. That conclusion comports with the Act's purposes and this Court's precedent.

1. The FDCPA's text establishes a two-tiered framework by defining two types of "debt collector" and imposing different statutory requirements on each. First, Section 1692a(6)'s opening sentence establishes a general definition stating that "'debt collector' means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another." 15 U.S.C. 1692a(6). A person who meets that general definition (and is not otherwise excluded) is subject to all of the FDCPA's provisions.

Second, Section 1692a(6)'s third sentence sets forth an additional definition of "debt collector" that applies *only* for purposes of one FDCPA provision.[1] It states that, "[f]or the purpose of section 1692f(6) of this title,

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[1] The second, intervening sentence clarifies that, "[n]otwithstanding" the exclusion in paragraph (F), "debt collector" does "include[] any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts." 15 U.S.C. 1692a(6).

such term also includes any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the enforcement of security interests." 15 U.S.C. 1692a(6). Section 1692f prohibits "debt collector[s]" from "us[ing] unfair or unconscionable means to collect or attempt to collect any debt." 15 U.S.C. 1692f. Subsection (6) makes it "a violation" of that prohibition to "[t]ak[e] or threaten[] to take nonjudicial action to effect dispossession or disablement of property" if the debt collector lacks a "present right to possession of the property claimed as collateral through an enforceable security interest," if "there is no present intention to take possession of the property," or if "the property is exempt by law from such dispossession or disablement." 15 U.S.C. 1692f(6). A person who meets Section 1692a(6)'s additional definition, but not the general definition, is a debt collector *only* for purposes of Section 1692f(6) and is subject only to that provision's requirements.

It follows from those two definitions that enforcement of a security interest, standing alone, generally is not debt collection under the FDCPA. It is debt collection only for the limited purpose of Section 1692f(6). Section 1692a(6)'s third sentence, which states that the term "debt collector" "also includes" businesses whose principal purpose is "the enforcement of security interests," establishes an additional definition. See *Mount Lemmon Fire Dist.* v. *Guido*, No. 17-587 (Nov. 6, 2018), slip op. 4 ("'also'" in statutory definition "is a term of enhancement; it means 'in addition; besides' and 'likewise; too'" (citation omitted)). That additional definition expands the term's meaning beyond what the first sentence's general definition covers.

A contrary reading would "flout[] the rule that 'a statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous.'" *Clark* v. *Rameker*, 134 S. Ct. 2242, 2248 (2014) (citation omitted). If "enforcement of security interests" were a form of debt collection, there would have been no reason for Congress to have enacted that additional definition: every person who met the additional definition would necessarily *also* satisfy the general definition, rendering the additional definition superfluous. Courts are loath to read a statute to render a definition "unnecessary." *Roberts* v. *Sea-Land Servs., Inc.*, 566 U.S. 93, 110 (2012). Congress's inclusion of both definitions shows that it viewed enforcement of security interests and debt collection to be distinct.

The FDCPA's structure powerfully confirms that conclusion. Congress limited the additional definition of "debt collector" to *one* FDCPA provision, Section 1692f(6). As the FTC's staff explained in commentary thirty years ago, because the FDCPA's definition of debt collector "includes parties whose principal business is enforcing security interests only for [Section 1692f(6)] purposes, such parties (if they do not otherwise fall within the definition) are subject only to this provision and not to the rest of the FDCPA." 53 Fed. Reg. 50,097, 50,108 (Dec. 13, 1988). Construing "enforcement of security interests" to be a form of debt collection, however, would nullify Congress's decision to impose on security-interest enforcers only that one requirement, instead making them subject to the entire Act. See *Roberts*, 566 U.S. at 111 (rejecting interpretation that

would render superfluous a "carefully limited" statutory definition that applied only "[f]or the purpose of" a particular subsection (citation omitted)).[2]

2. Construing the FDCPA generally not to regulate security-interest enforcement as debt collection comports with the Act's purposes. Congress made clear that it did not intend categorically to bar lawful methods of enforcing consumers' debts. It found that "[m]eans other than misrepresentation or other abusive debt collection practices are available for the effective collection of debts" and sought to "insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged." 15 U.S.C. 1692(c) and (e). Congress was focused on "abusive, deceptive, and unfair debt collection practices" that "[e]xisting laws and procedures" were "inadequate" to address. 15 U.S.C. 1692(a) and (b).

Enforcement of security interests in accordance with applicable law does not implicate those concerns. Permitting security-interest holders to take or sell pledged collateral provides creditors an alternative remedy that does not depend on whether consumers agree or are able to make payments. It therefore poses significantly less risk than demanding payment from a consumer, where the creditor or its agent may resort to abusive tactics to persuade a consumer to pay.

Any risk of abuse is further reduced because enforcement of security interests is governed by an extensive,

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[2] The FDCPA's legislative history indicates that this structure was a considered compromise. Resp. Br. 25-27. An earlier bill treated those engaged in "enforcement of security interests" as debt collectors for all purposes, S. 918, 95th Cong., 1st Sess., § 803(f) (1977), while another excluded them entirely, S. 1130, 95th Cong., 1st Sess., § 802(8)(E) (1977). The enacted law struck a balance, including such persons only for purposes of Section 1692f(6).

well-established body of state law, which prescribes orderly procedures to enforce such interests and provides substantial safeguards to consumers. See pp. 4-6, *supra*; Resp. Br. 42-45. Creditors and their agents must "strictly adhere to" state-law requirements, or else the foreclosure will likely be void. 2 Dunaway § 17:2. There is no basis to assume that Congress deemed those state-law mechanisms inadequate or intended to federalize this traditional area of property law.

To the contrary, the FDCPA's text and structure reflect that Congress did not perceive the mere enforcement of security interests in accordance with applicable law as posing the same risk of consumer harms as the debt-collection activity to which the Act applies. Section 1692f(6) specifically addresses taking "property claimed as collateral through an enforceable security interest," 15 U.S.C. 1692f(6)(A), and it permits a debt collector to do so as long as the debt collector complies with applicable law and does not threaten to take collateral it does not actually intend to take. Section 1692f(6) forbids a debt collector to take "nonjudicial action" to "dispossess[]" or "disable[]" collateral *only if* (1) the debt collector is not legally entitled to do so, either because it lacks a "right to possession" under a security interest or the collateral is otherwise "exempt," 15 U.S.C. 1692f(6)(A) and (C); or (2) the debt collector has no "present intention" to take the property, 15 U.S.C. 1692f(6)(B). And Section 1692f(6) is the only FDCPA provision that applies to persons who are debt collectors under the additional definition because they enforce security interests. See 15 U.S.C. 1692a(6). Congress thus determined that laws governing security-interest enforcement (supplemented by a prohibition on false threats) provide adequate protection for consumers.

Even petitioner accepts that Congress did not intend to subject "typical * * * repossession agents (*i.e.*, the classic 'repo men')" to the Act's other provisions. Pet. Br. 5; see *id.* at 25-26. That particular, self-help method of security-interest enforcement often involves no direct state supervision. If repossession does not implicate the Act's core concerns, then *a fortiori* neither do more formalized state-law processes for enforcing security interests.[3]

3. *Heintz* v. *Jenkins*, 514 U.S. 291 (1995), on which petitioner relies (Br. 19), is not to the contrary. The "issue before [the Court]" in *Heintz* "[wa]s whether the term 'debt collector' in the [FDCPA] applies to a lawyer who 'regularly,' *through litigation*, tries to collect consumer debts." 514 U.S. at 292 (citation omitted). The Court held that it does. See *id.* at 294-299.

Heintz had no occasion to address whether enforcing a security interest constitutes debt collection, because the case involved a direct effort to obtain repayment. The creditor in *Heintz* sued a consumer to recover the balance due on a defaulted loan, and the creditor's lawyer wrote to the consumer's lawyer "[a]s part of an effort to settle the suit," listing the amount due. 514 U.S. at 293. The dispute was not whether that communication otherwise constituted debt collection, but whether it was nonetheless exempt from the FDCPA on the ground that the Act does not "apply to lawyers engaged in litigation." *Id.* at 294. The Court rejected that argument, reasoning that "a lawyer who regularly tries to obtain payment of consumer debts through legal proceedings is a lawyer who regularly 'attempts' to 'collect' those consumer debts," and Congress had enacted but since repealed an

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[3] As discussed below, see pp. 29-31, *infra*, petitioner's contention that the additional definition of "debt collector" is confined to repossession agents is incorrect on its own terms.

exception for lawyers collecting debts on clients' behalf. *Ibid.* (citation omitted). *Heintz* thus stands only for the proposition that a lawyer who engages in conduct that constitutes debt collection in the course of litigation is not exempt from the Act on that basis. It does not speak to whether enforcing a security interest is debt collection.

B. Initiating A Nonjudicial-Foreclosure Proceeding Constitutes Enforcement Of A Security Interest And So Generally Is Not Debt Collection Under The FDCPA

Because enforcement of a security interest by itself is not debt collection under the FDCPA (apart from Section 1692f(6)), a person cannot violate the Act by taking actions that are legally required to enforce a security interest. That is dispositive here because the initiation of a Colorado nonjudicial-foreclosure proceeding undisputedly was a required step in enforcing a security interest.[4]

1. The FDCPA does not define "security interests" or "enforcement," so the terms should be given their "ordinary meaning." *Encino Motorcars, LLC* v. *Navarro*, 138 S. Ct. 1134, 1140 (2018) (citation omitted); see *Heintz*, 514 U.S. at 294. "Security interest" is a legal

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[4] Although not implicated here, actions that are clearly incidental to the enforcement of a security interest also would not constitute debt collection (unless they involve an effort to obtain repayment of the debt) regardless of whether state law strictly requires them. For example, state law might not require a repossession agent to send a consumer a notice of the specific time the agent will repossess property, but the agent might do so as a courtesy to the consumer. There is no basis to conclude that Congress intended to regulate that type of purely informational communication as debt collection. This case does not present that question because, as explained below, state law undisputedly required McCarthy to file the notice with the public trustee to initiate a nonjudicial foreclosure.

term, and in ordinary legal usage, it generally refers to a property interest given to a creditor to secure a debt, granting the creditor the right to take or sell the property if the debtor does not pay. *Black's Law Dictionary* did not separately define "security interest" when the FDCPA was enacted, but it explained that the term "security" "is usually applied to an obligation, pledge, mortgage, deposit, lien, etc., given by a debtor in order to make sure the payment or performance of his debt, by furnishing the creditor with a resource to be used in case of failure in the principal obligation." *Black's Law Dictionary* 1522 (4th ed. 1951). Contemporaneous non-legal dictionaries mirrored that meaning of "security." See, *e.g.*, *Webster's New International Dictionary* 2263 (2d ed. 1958) (*Webster's Second*) ("*Law.* a. Something given, deposited, or pledged, to make secure, or certain, the fulfillment of an obligation, the payment of debt, etc.; property given or serving to render secure the enjoyment or enforcement of a right."). When "security interest" was added to *Black's Law Dictionary* two years after the Act's enactment, it was defined as (*inter alia*) "[a] form of interest in property which provides that the property may be sold on default in order to satisfy the obligation for which the security interest is given." *Black's Fifth* 1217. The term carries a substantially similar meaning today. See *Black's Tenth* 1562.[5]

"Enforce" means (*inter alia*) "[t]o put in force," to "cause to take effect," or "to give effect to." *Webster's Second* 847; see *Black's Fifth* 474; *Black's Tenth* 645. "[E]nforcement of security interests," 15 U.S.C. 1692a(6), therefore means giving force or effect to a creditor's

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[5] Other federal statutes adopt similar definitions, tailored to their particular contexts. See 7 U.S.C. 1631(e)(7); 11 U.S.C. 101(51), 1110(d)(2), 1168(d)(2); 26 U.S.C. 6323(h)(1); 49 U.S.C. 14301(a)(3).

right to take or compel the sale of pledged property in accordance with applicable law. When Congress referred to "enforcement of security interests," it presumably had in mind the methods of giving effect to such rights then available under state law. For example, in the case of personal property, if a consumer defaults on the debt, the holder of the security interest often may take possession of or disable the property in certain circumstances. U.C.C. § 9-609 (2017); see *id.* § 9-607(a) (describing other actions secured party may take following a default).

Enforcement of a security interest in real property has long taken the form of foreclosing on a mortgage—typically through a proceeding to compel the sale of mortgaged property. See, *e.g.*, William F. Walsh, *Treatise on Mortgages* § 67, at 278 (1934). Foreclosure is critically distinct from an action to recover on a consumer's *personal* liability to repay a debt—including to recover any amount that remains unpaid after the property has been sold. See Restatement § 8.2 & cmt. a. As respondent observes (Br. 4, 21), at common law, actions to foreclose on a mortgage were distinct from actions to recover a debt from the mortgagor personally. Today, a State may permit a creditor to do both in one proceeding—*i.e.*, to foreclose on a mortgage, and then to obtain a judgment against the consumer for any deficiency, or vice versa—but the two remedies remain distinct. See Restatement § 8.2. When foreclosure is divorced from any effort to recover a remaining deficiency from the consumer, it constitutes enforcement of a security interest and so generally is not debt collection under the FDCPA.

2. Commencing a Colorado nonjudicial-foreclosure proceeding, as McCarthy did here, is the enforcement of a security interest. Colorado's process allows a creditor

with a security interest in real property to request that the public trustee sell the property to enforce that interest. If the sale is approved, the trustee sells the property and distributes the proceeds—first to lienholders, then the remainder if any to the owner. Although Colorado's procedure involves a court, the creditor cannot obtain a deficiency judgment in the same proceeding, but must file a separate suit. See pp. 7-8, *supra*.

Because Colorado's nonjudicial-foreclosure process is a method for enforcing a security interest, action that is legally required to invoke or prosecute a nonjudicial-foreclosure proceeding is not debt collection under the FDCPA (except for 15 U.S.C. 1692f(6)). In this case, petitioner has not disputed that filing of the notice of election and demand with a public trustee is a required step in pursuing nonjudicial foreclosure. McCarthy therefore did not engage in debt collection triggering the FDCPA provisions at issue here.[6]

That conclusion also avoids potentially substantial but likely unintended interference by federal law with state-law processes that do not implicate the problems the

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[6] Consistent with this understanding, in a 1992 opinion letter, FTC staff stated their view that the FDCPA does not apply to "a notice sent by an attorney collector in connection with a non-judicial foreclosure" that was required "by statute as a condition precedent to the enforcement of a contractual obligation between a creditor and a debtor, whether by judicial or non-judicial process." Office of the Secretary, FTC, Staff Opinion Letter, 1992 WL 12622329, at *3 (Oct. 8, 1992). In *Vien-Phuong Thi Ho* v. *ReconTrust Co.*, 858 F.3d 568 (9th Cir.), cert. denied, 138 S. Ct. 504 (2017), the Bureau filed an amicus brief, at the court of appeals' invitation, arguing that notices required by state law to be sent to consumers to effectuate a nonjudicial foreclosure did constitute debt collection under the Act. See Gov't Br. at 6-20, *Ho*, *supra* (No. 10-56884). The Bureau has reconsidered that position and now endorses the position set forth in this brief.

FDCPA states Congress sought to address. For example, as the court of appeals observed, Pet. App. 10a-11a, the FDCPA prohibits a debt collector, in connection with a debt, from communicating with third parties, 15 U.S.C. 1692c(b), or directly with a consumer whom a debt collector knows is represented by an attorney, 15 U.S.C. 1692c(a)(2). But state law—in Colorado and elsewhere—often requires a party pursuing nonjudicial foreclosure to do both, by advertising the foreclosure sale and sending certain notices to the debtor. See Colo. R. Civ. P. 120(a) and (b); Pet. App. 10a-11a; see also *Vien-Phuong Thi Ho* v. *ReconTrust Co.*, 858 F.3d 568, 575 (9th Cir.) (describing California law), cert. denied, 138 S. Ct. 504 (2017).

It is highly unlikely that Congress intended to preclude creditors from supplying notices to the public and to consumers that States require. Indeed, in 15 U.S.C. 1692n, Congress disclaimed any intention to "annul, alter, or affect, or exempt any person subject to the provisions of [the Act] from complying with the laws of any State with respect to debt collection practices" unless they are "inconsistent with" the FDCPA. *Ibid.* Given that state law typically requires strict compliance with foreclosure procedures, see pp. 5-6, *supra*, construing the FDCPA to preclude compliance with those procedures could impede state foreclosures. It is especially improbable that Congress intended the FDCPA to outlaw notices to the consumer and the public required by state law, because such notices can benefit consumers in multiple ways—for example, keeping consumers apprised of the proceedings and their rights, and encouraging competitive bidding on property to be sold. See Resp. Br. 43-45.

3. Although taking steps legally required to effectuate a nonjudicial foreclosure does not constitute debt

collection for most FDCPA provisions, entities that pursue such foreclosures remain subject to important constraints. First, such entities must comply with applicable state law; otherwise, the foreclosure sale will likely be invalid. See 2 Dunaway § 17:2. Second, entities that meet the additional definition of "debt collector" because their principal purpose is enforcing security interests are subject to the requirements of 15 U.S.C. 1692f(6). Such entities therefore may take or threaten nonjudicial action to dispossess or disable property only if they have an enforceable security interest, have the present intention to do so, and doing so is not otherwise barred by law. *Ibid.*[7]

Third, a person who engages in security-interest enforcement but who goes further and undertakes other

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[7] In a footnote, the court of appeals stated that those who engage in nonjudicial foreclosures are not subject to Section 1692f(6). Pet. App. 7a-8a n.4. The court observed that "[Section] 1692f(6) prohibits 'dispossession or disablement of property' when the security enforcer has no 'present right to possession of the property,' or when the enforcer has no 'present intention to take possession of the property.'" *Id.* at 8a n.4. It stated that "[a] non-judicial foreclosure proceeding does not fit this bill" because the security-interest enforcer "has no present right to possession of the property," and instead "[i]t is the *public trustee* who holds the deed of trust and sells the property." *Ibid.* That statement was not necessary to the court's judgment, but it is incorrect. A person does not violate Section 1692f(6) by taking steps to carry out a nonjudicial foreclosure in accordance with state law simply because a trustee, rather than the person commencing foreclosure, formally holds the present right to possession. In any event, the court appears to have conflated whether a person carrying out a nonjudicial foreclosure is subject to Section 1692f(6) with whether the person's conduct violates that provision. Under the Act's plain terms, all debt collectors—including enforcers of security interests, who are covered only under Section 1692a(6)'s additional definition—are subject to, and must comply with, Section 1692f(6).

acts that themselves constitute debt collection may be subject to the FDCPA like anyone else. For example, a firm hired to pursue nonjudicial foreclosure that sends the required pre-sale notices to a consumer—but *also* sends letters demanding payment or using the threat of foreclosure to pressure the consumer to pay—engages in debt collection, even though the foreclosure itself is not debt collection. Similarly, if an entity that seeks foreclosure also pursues a deficiency judgment, the latter conduct would be debt collection. See, *e.g.*, *McNair* v. *Maxwell & Morgan PC*, 893 F.3d 680, 683 (9th Cir. 2018); *Cohen* v. *Rosicki, Rosicki & Assocs., P.C.*, 897 F.3d 75, 81 n.7 (2d Cir. 2018). The FDCPA does not immunize persons who enforce security interests from its requirements when they regularly engage in additional conduct that constitutes debt collection under the Act.

Petitioner contends that "it is difficult to draw an administrable line" between enforcement of security interests and "'more aggressive collection efforts.'" Pet. Br. 18 (quoting Pet. App. 12a). But drawing that line has not proven too hard for federal courts in practice.[8] Most States define precisely when the nonjudicial-foreclosure process begins—typically, when a notice of default or

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[8] See, *e.g.*, *Ho*, 858 F.3d at 574 (communications that were "limited to the foreclosure process," "didn't request payment," and "merely informed" consumer about foreclosure process were not debt collection); *Reese* v. *Ellis, Painter, Ratterree & Adams, LLP*, 678 F.3d 1211, 1218 (11th Cir. 2012) (defendant was engaged in debt collection because, rather than strictly adhering to state notice requirements, it made a demand for payment that was not required to effectuate nonjudicial foreclosure); *Piper* v. *Portnoff Law Assocs., Ltd.*, 396 F.3d 227, 233-234 (3d Cir. 2005) (letters that "demanded the personal payment of money" were debt collection even though debt collector purportedly sought to "enforce a lien").

similar document is served or recorded. 2 Dunaway § 17:1. If communications occur before the process may commence, they likely are not enforcement of a security interest.

C. Petitioner's Contrary Arguments Lack Merit

1. a. Petitioner principally contends (Br. 14-20, 24-26) that, regardless of whether nonjudicial foreclosure constitutes enforcement of a security interest, it is *also* debt collection and thus falls under the FDCPA. In his view (Br. 25), the Act applies to persons who collect debts by means of enforcing a security interest, and nonjudicial foreclosure constitutes both a "'direct[] [and] indirect[]' method of collecting a debt." *Id.* at 14 (quoting 15 U.S.C. 1692a(6)). That is incorrect.

Petitioner first argues (Br. 14-15) that "[n]on-judicial foreclosure is a 'direct' attempt to collect a debt" because state law generally requires a party seeking foreclosure to send notices to the consumer that send a "message" equivalent to a demand for repayment. That is mistaken. The FDCPA's text makes the person's actual conduct, not an implicit "message" a consumer might perceive from it, the touchstone in identifying who is a debt collector. See 15 U.S.C. 1692a(6). In any event, although those required notices advise debtors of their right to avoid foreclosure by paying the debt, advising consumers of that state-law right is not tantamount to a demand for repayment. Such a notice apprises the consumer that the creditor intends to pursue foreclosure *instead of* seeking repayment from the consumer directly of part or all of the debt and that the consumer has the option of repaying.

Moreover, other methods of enforcing security interests exist that similarly require sending notices to con-

sumers and that even petitioner does not contend constitute debt collection. For example, petitioner holds out "classic 'repo' activity," such as repossession of a vehicle, as the paradigmatic means of enforcing security interests that is not debt collection. Pet. Br. 25. But in the case of vehicle repossession, the model U.C.C. requires that notice be provided to consumers after the collateral is taken but before it is disposed of, which informs the consumer of his rights to redeem the collateral by paying the balance owed. U.C.C. § 9-614 (2017); see *id.* § 9-623 (redemption rights). Petitioner's theory cannot explain why those notices are not debt collection but notices initiating nonjudicial foreclosure are.

Petitioner's argument also proves far too much. If he were correct that nonjudicial foreclosure constitutes debt collection because it has the intent or effect of persuading the consumer to repay the debt, the same would appear to be true of any other form of enforcing security interests. For example, petitioner acknowledges (Br. 25-26) that "changing locks" is the enforcement of a security interest and is not "debt collection" under the Act. But physically disabling a consumer's property (*e.g.*, a vehicle) is at least equally likely to have the intent and effect of inducing the consumer to pay, and it provides a much more powerful inducement to pay than a "classic dunning letter[]." Pet. Br. 16; see generally Michael Corkery & Jessica Silver-Greenberg, *Miss a Payment? Good Luck Moving That Car*, N.Y. Times, Sept. 24, 2014 (addressing modern electronic-disabling technology). Even if formal notices are not required, a tow truck removing a consumer's vehicle from his driveway sends at least as strong a "message" to an "ordinary consumer" (Pet. Br. 15) as a notice initiating a nonjudicial-foreclosure proceeding.

Petitioner also contends that "non-judicial foreclosure is an 'indirect' attempt to collect a debt" because a "foreclosure sells the house to pay the debt" and thereby "liquidat[es] the borrower's debt." Pet. Br. 19-20 (emphasis omitted).[9] That argument likewise proves too much. Every enforcement of a security interest—whether by repossession or by power of sale—necessarily entails "payment or liquidation" of a debt in the same sense as foreclosure. The purpose of a security interest is to secure the consumer's obligation to repay by giving the creditor recourse against particular property if the consumer defaults. See pp. 4-6, 19-21, *supra*. And the intended result of repossessing property is that either the security-interest holder will recoup some or all the value of the defaulted debt (*e.g.*, by selling the repossessed property) or the consumer will pay the debt. Either way, repossession (if successful) results in satisfying part or all of the outstanding debt. The fact that the repossession agent itself may not sell the property is equally immaterial. Once a consumer's property has been taken from him, whether the creditor keeps or sells the property—and if it is sold, who conducts the sale—has no bearing on whether the debt has been liquidated.

Petitioner's direct and indirect debt-collection arguments thus would appear to apply to all security-interest enforcement. The FDCPA should not be construed to render Section 1692a(6)'s additional definition of "debt collector" "superfluous in all but the most unusual circumstances." *TRW Inc.* v. *Andrews*, 534 U.S. 19, 29

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[9] The general definition of "debt collector" refers to "indirect[]" efforts to collect debts only with respect to persons who "regularly collect[]" debts, not with respect to persons engaged in a business the "principal purpose" of which is to collect debts. 15 U.S.C. 1692a(6).

(2001); see *id.* at 31 (rejecting interpretation under which an "express exception would be rendered 'insignificant, if not wholly superfluous'" (citation omitted)).

b. Petitioner argues (Br. 25) that his position would not render Section 1692a(6)'s additional definition of "debt collector" superfluous if that definition is construed to cover only "classic 'repo' activity." That arbitrarily narrow reading of the additional definition lacks any basis in text or logic, and does not even save the additional definition from superfluity under petitioner's theory.

Petitioner's argument requires reading "the enforcement of security interests" in Section 1692a(6) as a cryptic euphemism for one specific form of self-help. But "enforcement" and "security interests" are general terms whose ordinary meanings sweep far beyond repossession of the type petitioner describes. See pp. 19-21, *supra*. "Without some indication to the contrary, general words * * * are to be accorded their full and fair scope" and thus "must be given general effect," and not "arbitrarily limited." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 101 (2012); see *id.* at 101-106; see, *e.g.*, *Oncale* v. *Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 79-80 (1998). In addition, Congress referred specifically to "dispossession" and "disablement" elsewhere in the same statute, 15 U.S.C. 1692f(6), and petitioner reads those words (Br. 25-26) to apply only to "classic 'repo' activity." The "presum[ption] that Congress acts intentionally and purposely" in "includ[ing] particular language in one section of [the] statute but omit[ting] it in another section of the same Act," *Russello* v. *United States*, 464 U.S. 16, 23 (1983) (citation omitted), counsels strongly against reading the different, broader phrase "enforcement of security interests" in Section 1692a(6)

narrowly to encompass *only* "classic 'repo' activity." Pet. Br. 25.

Moreover, construing Section 1692a(6)'s definition to encompass only "classic 'repo' activity," Pet. Br. 25, and thus to exempt only that activity from nearly all of the FDCPA's provisions, would turn the Act upside-down. A repossession agency that physically removes pledged collateral from a consumer's residence is if anything more naturally described as "collect[ing]" from the consumer than a creditor's agent hired to file foreclosure papers. 15 U.S.C. 1692a(6). And the abusive practices and other problems that concerned Congress, see 15 U.S.C. 1692(a), seem more likely to arise if a repossession agency interacts with consumers in person. It would be incongruous to impose fewer or no restrictions on repossession that may involve face-to-face confrontations with consumers than on filing papers with a state official to commence a proceeding to sell collateral in an orderly manner—which may involve no personal interaction with the consumer at all.

Petitioner's interpretation would also likely leave a significant and unexplained gap in the Act's coverage. Properly construed, the FDCPA applies to persons who demand repayment of a debt in kind (rather than in cash), or who take a consumer's unsecured property to satisfy such a debt, because neither of those constitutes enforcing a security interest. But on petitioner's reading, such persons would appear to be exempt: in petitioner's view, repossessing property is not debt collection—so long as the repossession agent does not communicate with the consumer and does not itself sell the property—and repossessing unsecured property is not enforcement of a security interest. It is implausible that Congress left a loophole in the statute for debt collectors who do not

deal in cash and intended to leave consumers unprotected from efforts to reclaim unsecured property, yet intended to subject foreclosure pursuant to state law to all of the FDCPA's requirements.

In any event, petitioner's atextual reading of "enforcement of security interests" to mean only "classic 'repo' activity" (Br. 25) does not even save the additional definition of "debt collector" from becoming surplusage on his theory. Petitioner's arguments that nonjudicial foreclosure constitutes a direct and indirect method of debt collection apply with full force to repossession. See pp. 27-29, *supra*. Repossession has the intent and effect of inducing repayment to at least the same extent as nonjudicial foreclosure, and its intended result is that either the debtor will repay the debt or the collateral will be sold to satisfy part or all of the debt. If the collateral is sold, the FDCPA's application cannot sensibly turn on whether the repossession agent itself sells the collateral or turns it over to the creditor to sell. Petitioner's ad hoc interpretation of the additional, limited-purpose definition of debt collector leaves it a dead letter.

2. Petitioner also incorrectly contends (Br. 21) that the venue requirement in 15 U.S.C. 1692i(a)(1) supports his view that "foreclosure constitutes 'debt collection.'" Section 1692i(a)(1) provides that "[a]ny debt collector who brings any legal action on a debt against any consumer shall[,] * * * in the case of an action to enforce an interest in real property securing the consumer's obligation, bring such action only in a judicial district or similar legal entity in which such real property is located." *Ibid.* That text does not classify an "action to enforce an interest in real property securing the consumer's obligation" as "debt collection." It simply

requires persons who are otherwise "debt collectors" to bring actions to enforce security interests in real property in specified venues. See *Kaltenbach* v. *Richard*, 464 F.3d 524, 529 (5th Cir. 2006).

That reading does not leave Section 1692i with "no realistic application." Pet. Br. 21. Many entities that satisfy the general definition of "debt collector" engage in the type of legal actions that Section 1692i governs. In particular, the provision often would apply to entities whose principal purpose is carrying out *judicial* foreclosures—which in some States is the exclusive means of foreclosing on residential mortgages. Moreover, Section 1692i does not speak to nonjudicial foreclosures at all, which do not involve bringing a "legal action on a debt against [a] consumer." Pet. App. 9a (citation omitted); see 2 Dunaway § 16:1; *Ho*, 858 F.3d at 570-571.

3. Finally, petitioner contends (Br. 21) that Congress "excluded certain groups, *but not entities pursuing foreclosures*, from the FDCPA's scope," and infers that nonjudicial foreclosure therefore must be covered. But the absence of such an exclusion reflects that persons who engage in nonjudicial foreclosure (and other enforcement of security interests) *are* debt collectors for purposes of one FDCPA provision, Section 1692f(6). Petitioner's assertion (Br. 23-24) that the Act's history shows Congress did not intend to exempt mortgages fails for the same reason: mortgage debt is not categorically exempt from the Act, and debt collection in connection with a mortgage may trigger the FDCPA. Congress simply made clear that it did not consider the enforcement of security interests by itself to be debt collection.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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NOVEMBER 2018

APPENDIX

1. 15 U.S.C. 1692 provides:

Congressional findings and declaration of purpose

(a) Abusive practices

There is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors. Abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.

(b) Inadequacy of laws

Existing laws and procedures for redressing these injuries are inadequate to protect consumers.

(c) Available non-abusive collection methods

Means other than misrepresentation or other abusive debt collection practices are available for the effective collection of debts.

(d) Interstate commerce

Abusive debt collection practices are carried on to a substantial extent in interstate commerce and through means and instrumentalities of such commerce. Even where abusive debt collection practices are purely intrastate in character, they nevertheless directly affect interstate commerce.

(e) Purposes

It is the purpose of this subchapter to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively

disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.

2. 15 U.S.C. 1692a provides:

Definitions

As used in this subchapter—

(1) The term "Bureau" means the Bureau of Consumer Financial Protection.

(2) The term "communication" means the conveying of information regarding a debt directly or indirectly to any person through any medium.

(3) The term "consumer" means any natural person obligated or allegedly obligated to pay any debt.

(4) The term "creditor" means any person who offers or extends credit creating a debt or to whom a debt is owed, but such term does not include any person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another.

(5) The term "debt" means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

(6) The term "debt collector" means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of

which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. Notwithstanding the exclusion provided by clause (F) of the last sentence of this paragraph, the term includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts. For the purpose of section 1692f(6) of this title, such term also includes any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the enforcement of security interests. The term does not include—

(A) any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;

(B) any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for persons to whom it is so related or affiliated and if the principal business of such person is not the collection of debts;

(C) any officer or employee of the United States or any State to the extent that collecting or attempting to collect any debt is in the performance of his official duties;

(D) any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt;

(E) any nonprofit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors; and

(F) any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity (i) is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement; (ii) concerns a debt which was originated by such person; (iii) concerns a debt which was not in default at the time it was obtained by such person; or (iv) concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor.

(7) The term "location information" means a consumer's place of abode and his telephone number at such place, or his place of employment.

(8) The term "State" means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing.

3. 15 U.S.C. 1692b provides:

Acquisition of location information

Any debt collector communicating with any person other than the consumer for the purpose of acquiring location information about the consumer shall—

(1) identify himself, state that he is confirming or correcting location information concerning the consumer, and, only if expressly requested, identify his employer;

(2) not state that such consumer owes any debt;

(3) not communicate with any such person more than once unless requested to do so by such person or unless the debt collector reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information;

(4) not communicate by post card;

(5) not use any language or symbol on any envelope or in the contents of any communication effected by the mails or telegram that indicates that the debt collector is in the debt collection business or that the communication relates to the collection of a debt; and

(6) after the debt collector knows the consumer is represented by an attorney with regard to the subject debt and has knowledge of, or can readily ascertain, such attorney's name and address, not communicate with any person other than that attorney, unless the attorney fails to respond within a reasonable period of time to communication from the debt collector.

4. 15 U.S.C. 1692c provides:

Communication in connection with debt collection

(a) Communication with the consumer generally

Without the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer in connection with the collection of any debt—

(1) at any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating with a consumer is after 8 o'clock antemeridian and before 9 o'clock postmeridian, local time at the consumer's location;

(2) if the debt collector knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communication with the consumer; or

(3) at the consumer's place of employment if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication.

(b) Communication with third parties

Except as provided in section 1692b of this title, without the prior consent of the consumer given directly

to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a postjudgment judicial remedy, a debt collector may not communicate, in connection with the collection of any debt, with any person other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector.

(c) Ceasing communication

If a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further communication with the consumer, the debt collector shall not communicate further with the consumer with respect to such debt, except—

(1) to advise the consumer that the debt collector's further efforts are being terminated;

(2) to notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or creditor; or

(3) where applicable, to notify the consumer that the debt collector or creditor intends to invoke a specified remedy.

If such notice from the consumer is made by mail, notification shall be complete upon receipt.

(d) "Consumer" defined

For the purpose of this section, the term "consumer" includes the consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator.

5. 15 U.S.C. 1692d provides:

Harassment or abuse

A debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person.

(2) The use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader.

(3) The publication of a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency or to persons meeting the requirements of section 1681a(f) or 1681b(3)[1] of this title.

(4) The advertisement for sale of any debt to coerce payment of the debt.

(5) Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.

(6) Except as provided in section 1692b of this title, the placement of telephone calls without meaningful disclosure of the caller's identity.

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[1] See References in Text note below

6. 15 U.S.C. 1692e provides:

False or misleading representations

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The false representation or implication that the debt collector is vouched for, bonded by, or affiliated with the United States or any State, including the use of any badge, uniform, or facsimile thereof.

(2) The false representation of—

(A) the character, amount, or legal status of any debt; or

(B) any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt.

(3) The false representation or implication that any individual is an attorney or that any communication is from an attorney.

(4) The representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector or creditor intends to take such action.

(5) The threat to take any action that cannot legally be taken or that is not intended to be taken.

(6) The false representation or implication that a sale, referral, or other transfer of any interest in a debt shall cause the consumer to—

(A) lose any claim or defense to payment of the debt; or

(B) become subject to any practice prohibited by this subchapter.

(7) The false representation or implication that the consumer committed any crime or other conduct in order to disgrace the consumer.

(8) Communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed.

(9) The use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any State, or which creates a false impression as to its source, authorization, or approval.

(10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

(11) The failure to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communi-

cations that the communication is from a debt collector, except that this paragraph shall not apply to a formal pleading made in connection with a legal action.

(12) The false representation or implication that accounts have been turned over to innocent purchasers for value.

(13) The false representation or implication that documents are legal process.

(14) The use of any business, company, or organization name other than the true name of the debt collector's business, company, or organization.

(15) The false representation or implication that documents are not legal process forms or do not require action by the consumer.

(16) The false representation or implication that a debt collector operates or is employed by a consumer reporting agency as defined by section 1681a(f) of this title.

7. 15 U.S.C. 1692f provides:

Unfair practices

A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly

authorized by the agreement creating the debt or permitted by law.

(2) The acceptance by a debt collector from any person of a check or other payment instrument postdated by more than five days unless such person is notified in writing of the debt collector's intent to deposit such check or instrument not more than ten nor less than three business days prior to such deposit.

(3) The solicitation by a debt collector of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution.

(4) Depositing or threatening to deposit any postdated check or other postdated payment instrument prior to the date on such check or instrument.

(5) Causing charges to be made to any person for communications by concealment of the true purpose of the communication. Such charges include, but are not limited to, collect telephone calls and telegram fees.

(6) Taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if—

(A) there is no present right to possession of the property claimed as collateral through an enforceable security interest;

(B) there is no present intention to take possession of the property; or

(C) the property is exempt by law from such dispossession or disablement.

(7) Communicating with a consumer regarding a debt by post card.

(8) Using any language or symbol, other than the debt collector's address, on any envelope when communicating with a consumer by use of the mails or by telegram, except that a debt collector may use his business name if such name does not indicate that he is in the debt collection business.

8. 15 U.S.C. 1692g provides:

Validation of debts

(a) Notice of debt; contents

Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing—

(1) the amount of the debt;

(2) the name of the creditor to whom the debt is owed;

(3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;

(4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy

of such verification or judgment will be mailed to the consumer by the debt collector; and

(5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

(b) Disputed debts

If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) of this section that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or a copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector. Collection activities and communications that do not otherwise violate this subchapter may continue during the 30-day period referred to in subsection (a) unless the consumer has notified the debt collector in writing that the debt, or any portion of the debt, is disputed or that the consumer requests the name and address of the original creditor. Any collection activities and communication during the 30-day period may not overshadow or be inconsistent with the disclosure of the consumer's right to dispute the debt or request the name and address of the original creditor.

(c) Admission of liability

The failure of a consumer to dispute the validity of a debt under this section may not be construed by any court as an admission of liability by the consumer.

(d) Legal pleadings

A communication in the form of a formal pleading in a civil action shall not be treated as an initial communication for purposes of subsection (a).

(e) Notice provisions

The sending or delivery of any form or notice which does not relate to the collection of a debt and is expressly required by title 26, title V of Gramm-Leach-Bliley Act [15 U.S.C. 6801 et seq.], or any provision of Federal or State law relating to notice of data security breach or privacy, or any regulation prescribed under any such provision of law, shall not be treated as an initial communication in connection with debt collection for purposes of this section.

9. 15 U.S.C. 1692h provides:

Multiple debts

If any consumer owes multiple debts and makes any single payment to any debt collector with respect to such debts, such debt collector may not apply such payment to any debt which is disputed by the consumer and, where applicable, shall apply such payment in accordance with the consumer's directions.

10. 15 U.S.C. 1692i provides:

Legal actions by debt collectors

(a) Venue

Any debt collector who brings any legal action on a debt against any consumer shall—

(1) in the case of an action to enforce an interest in real property securing the consumer's obligation, bring such action only in a judicial district or similar legal entity in which such real property is located; or

(2) in the case of an action not described in paragraph (1), bring such action only in the judicial district or similar legal entity—

(A) in which such consumer signed the contract sued upon; or

(B) in which such consumer resides at the commencement of the action.

(b) Authorization of actions

Nothing in this subchapter shall be construed to authorize the bringing of legal actions by debt collectors.

11. 15 U.S.C. 1692j provides:

Furnishing certain deceptive forms

(a) It is unlawful to design, compile, and furnish any form knowing that such form would be used to create the false belief in a consumer that a person other than the creditor of such consumer is participating in the collection of or in an attempt to collect a debt

such consumer allegedly owes such creditor, when in fact such person is not so participating.

(b) Any person who violates this section shall be liable to the same extent and in the same manner as a debt collector is liable under section 1692k of this title for failure to comply with a provision of this subchapter.

12. 15 U.S.C. 1692k provides:

Civil liability

(a) Amount of damages

Except as otherwise provided by this section, any debt collector who fails to comply with any provision of this subchapter with respect to any person is liable to such person in an amount equal to the sum of—

(1) any actual damage sustained by such person as a result of such failure;

(2)(A) in the case of any action by an individual, such additional damages as the court may allow, but not exceeding $1,000; or

(B) in the case of a class action, (i) such amount for each named plaintiff as could be recovered under subparagraph (A), and (ii) such amount as the court may allow for all other class members, without regard to a minimum individual recovery, not to exceed the lesser of $500,000 or 1 per centum of the net worth of the debt collector; and

(3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court. On a finding by the court that an

action under this section was brought in bad faith and for the purpose of harassment, the court may award to the defendant attorney's fees reasonable in relation to the work expended and costs.

(b) Factors considered by court

In determining the amount of liability in any action under subsection (a) of this section, the court shall consider, among other relevant factors—

(1) in any individual action under subsection (a)(2)(A) of this section, the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, and the extent to which such noncompliance was intentional; or

(2) in any class action under subsection (a)(2)(B) of this section, the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, the resources of the debt collector, the number of persons adversely affected, and the extent to which the debt collector's noncompliance was intentional.

(c) Intent

A debt collector may not be held liable in any action brought under this subchapter if the debt collector shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(d) Jurisdiction

An action to enforce any liability created by this subchapter may be brought in any appropriate United States district court without regard to the amount in

controversy, or in any other court of competent jurisdiction, within one year from the date on which the violation occurs.

(c) Advisory opinions of Bureau

No provision of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any advisory opinion of the Bureau, notwithstanding that after such act or omission has occurred, such opinion is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

13. 15 U.S.C. 1692*l* provides:

Administrative enforcement

(a) Federal Trade Commission

The Federal Trade Commission shall be authorized to enforce compliance with this subchapter, except to the extent that enforcement of the requirements imposed under this subchapter is specifically committed to another Government agency under any of paragraphs (1) through (5) of subsection (b), subject to subtitle B of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5511 et seq.]. For purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act (15 U.S.C. 41 et seq.), a violation of this subchapter shall be deemed an unfair or deceptive act or practice in violation of that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Federal Trade Commission to enforce compliance by any person with

this subchapter, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests under the Federal Trade Commission Act, including the power to enforce the provisions of this subchapter, in the same manner as if the violation had been a violation of a Federal Trade Commission trade regulation rule.

(b) Applicable provisions of law

Subject to subtitle B of the Consumer Financial Protection Act of 2010, compliance with any requirements imposed under this subchapter shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818], by the appropriate Federal banking agency, as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), with respect to—

(A) national banks, Federal savings associations, and Federal branches and Federal agencies of foreign banks;

(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act [12 U.S.C. 601 et seq., 611 et seq.]; and

(C) banks and State savings associations insured by the Federal Deposit Insurance Corporation (other than members of the Federal

Reserve System), and insured State branches of foreign banks;

(2) the Federal Credit Union Act [12 U.S.C. 1751 et seq.], by the Administrator of the National Credit Union Administration with respect to any Federal credit union;

(3) subtitle IV of title 49, by the Secretary of Transportation, with respect to all carriers subject to the jurisdiction of the Surface Transportation Board;

(4) part A of subtitle VII of title 49, by the Secretary of Transportation with respect to any air carrier or any foreign air carrier subject to that part;

(5) the Packers and Stockyards Act, 1921 [7 U.S.C. 181 et seq.] (except as provided in section 406 of that Act [7 U.S.C. 226, 227]), by the Secretary of Agriculture with respect to any activities subject to that Act; and

(6) subtitle E of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5561 et seq.], by the Bureau, with respect to any person subject to this subchapter.

The terms used in paragraph (1) that are not defined in this subchapter or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

(c) Agency powers

For the purpose of the exercise by any agency referred to in subsection (b) of this section of its powers under any Act referred to in that subsection, a

violation of any requirement imposed under this subchapter shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (b) of this section, each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this subchapter any other authority conferred on it by law, except as provided in subsection (d) of this section.

(d) Rules and regulations

Except as provided in section 1029(a) of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5519(a)], the Bureau may prescribe rules with respect to the collection of debts by debt collectors, as defined in this subchapter.

14. 15 U.S.C. 1692m provides:

Reports to Congress by the Bureau; views of other Federal agencies

(a) Not later than one year after the effective date of this subchapter and at one-year intervals thereafter, the Bureau shall make reports to the Congress concerning the administration of its functions under this subchapter, including such recommendations as the Bureau deems necessary or appropriate. In addition, each report of the Bureau shall include its assessment of the extent to which compliance with this subchapter is being achieved and a summary of the enforcement actions taken by the Bureau under section 1692*l* of this title.

(b) In the exercise of its functions under this subchapter, the Bureau may obtain upon request the views of any other Federal agency which exercises enforcement functions under section 1692l of this title.

15. 15 U.S.C. 1692n provides:

Relation to State laws

This subchapter does not annul, alter, or affect, or exempt any person subject to the provisions of this subchapter from complying with the laws of any State with respect to debt collection practices, except to the extent that those laws are inconsistent with any provision of this subchapter, and then only to the extent of the inconsistency. For purposes of this section, a State law is not inconsistent with this subchapter if the protection such law affords any consumer is greater than the protection provided by this subchapter.

16. 15 U.S.C. 1692*o* provides:

Exemption for State regulation

The Bureau shall by regulation exempt from the requirements of this subchapter any class of debt collection practices within any State if the Bureau determines that under the law of that State that class of debt collection practices is subject to requirements substantially similar to those imposed by this subchapter, and that there is adequate provision for enforcement.

17. 15 U.S.C. 1692p provides:

Exception for certain bad check enforcement programs operated by private entities

(a) In general

(1) Treatment of certain private entities

Subject to paragraph (2), a private entity shall be excluded from the definition of a debt collector, pursuant to the exception provided in section 1692a(6) of this title, with respect to the operation by the entity of a program described in paragraph (2)(A) under a contract described in paragraph (2)(B).

(2) Conditions of applicability

Paragraph (1) shall apply if—

(A) a State or district attorney establishes, within the jurisdiction of such State or district attorney and with respect to alleged bad check violations that do not involve a check described in subsection (b), a pretrial diversion program for alleged bad check offenders who agree to participate voluntarily in such program to avoid criminal prosecution;

(B) a private entity, that is subject to an administrative support services contract with a State or district attorney and operates under the direction, supervision, and control of such State or district attorney, operates the pretrial diversion program described in subparagraph (A); and

(C) in the course of performing duties delegated to it by a State or district attorney under the contract, the private entity referred to in subparagraph (B)—

(i) complies with the penal laws of the State;

(ii) conforms with the terms of the contract and directives of the State or district attorney;

(iii) does not exercise independent prosecutorial discretion;

(iv) contacts any alleged offender referred to in subparagraph (A) for purposes of participating in a program referred to in such paragraph—

(I) only as a result of any determination by the State or district attorney that probable cause of a bad check violation under State penal law exists, and that contact with the alleged offender for purposes of participation in the program is appropriate; and

(II) the alleged offender has failed to pay the bad check after demand for payment, pursuant to State law, is made for payment of the check amount;

(v) includes as part of an initial written communication with an alleged offender a clear and conspicuous statement that—

(I) the alleged offender may dispute the validity of any alleged bad check violation;

(II) where the alleged offender knows, or has reasonable cause to believe, that the alleged bad check violation is the result of theft or forgery of the check, identity theft, or other fraud that is not the result of the conduct of the alleged offender, the alleged offender may file a crime report with the appropriate law enforcement agency; and

(III) if the alleged offender notifies the private entity or the district attorney in writing, not later than 30 days after being contacted for the first time pursuant to clause (iv), that there is a dispute pursuant to this subsection, before further restitution efforts are pursued, the district attorney or an employee of the district attorney authorized to make such a determination makes a determination that there is probable cause to believe that a crime has been committed; and

(vi) charges only fees in connection with services under the contract that have been authorized by the contract with the State or district attorney.

(b) Certain checks excluded

A check is described in this subsection if the check involves, or is subsequently found to involve—

(1) a postdated check presented in connection with a payday loan, or other similar transaction, where the payee of the check knew that the issuer had insufficient funds at the time the check was made, drawn, or delivered;

(2) a stop payment order where the issuer acted in good faith and with reasonable cause in stopping payment on the check;

(3) a check dishonored because of an adjustment to the issuer's account by the financial institution holding such account without providing notice to the person at the time the check was made, drawn, or delivered;

(4) a check for partial payment of a debt where the payee had previously accepted partial payment for such debt;

(5) a check issued by a person who was not competent, or was not of legal age, to enter into a legal contractual obligation at the time the check was made, drawn, or delivered; or

(6) a check issued to pay an obligation arising from a transaction that was illegal in the jurisdiction of the State or district attorney at the time the check was made, drawn, or delivered.

(c) Definitions

For purposes of this section, the following definitions shall apply:

(1) State or district attorney

The term "State or district attorney" means the chief elected or appointed prosecuting attorney in a district, county (as defined in section 2 of title 1), municipality, or comparable jurisdiction, including State attorneys general who act as chief elected or appointed prosecuting attorneys in a district, county (as so defined), municipality or comparable jurisdiction, who may be referred to by a variety of titles such as district attorneys, prosecuting attorneys, commonwealth's attorneys, solicitors, county attorneys, and state's attorneys, and who are responsible for the prosecution of State crimes and violations of jurisdiction-specific local ordinances.

(2) Check

The term "check" has the same meaning as in section 5002(6) of title 12.

(3) Bad check violation

The term "bad check violation" means a violation of the applicable State criminal law relating to the writing of dishonored checks.